

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTEMUS BLANKENSHIP,

Plaintiff,

v.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,

Defendant.

Case No. 1:21-cv-00581-NONE-SAB

ORDER DENYING PLAINTIFF'S
REQUEST FOR A NINETY DAY
EXTENSION OF TIME

(ECF No. 8)

FOURTEEN DAY DEADLINE

Artemus Blankenship ("Plaintiff"), a state prisoner proceeding pro se and *in forma pauperis*, filed this action against the Department of Treasury, Internal Revenue Service on April 7, 2021. (ECF No. 1.) On May 12, 2021, Plaintiff's complaint was screened and the Court found that it lacked jurisdiction because Plaintiff had not filed an administrative claim as required by 26 U.S.C. § 6511(a). (ECF No. 7.) Plaintiff was granted leave to file an amended complaint within thirty days. (*Id.*)

On June 9, 2021, Plaintiff filed a request for a ninety day extension of time to file his administrative claim and also asserted that he received a refund of \$1,400.00 on May 26, 2021. (ECF No. 8.) However, 26 U.S.C. § 7422 provides that no civil action can be maintained for a claim for refund or credit of taxes until a claim has been duly filed. Here, Plaintiff filed this action prior to exhausting his administrative remedies and, pursuant to section 7422, "a suit

cannot be maintained if it was filed before the exhaustion of administrative remedies.” Erickson v. United States, No. CV 13-00273-KAW, 2013 WL 2299624, at *3 (N.D. Cal. May 24, 2013). Therefore, Plaintiff cannot correct his failure to exhaust his administrative remedies prior to filing this suit in a later filed claim. See Gray v. United States, 723 F.3d 795, 799 (7th Cir. 2013) (belated attempt to file administrative claim did not comply with IRS procedures and therefore bars plaintiff from maintaining action).

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s request for a ninety day extension of time is DENIED;
2. Plaintiff SHALL FILE an amended complaint within **fourteen (14) days** of the date of entry of this order; and
3. Plaintiff is advised that failure to file an amended complaint in compliance with this order will result in this action being dismissed for failure to comply and failure to prosecute.

IT IS SO ORDERED.

Dated: **June 11, 2021**


UNITED STATES MAGISTRATE JUDGE